

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JESSICA WANG,

Plaintiff,

v.

LB INTERNATIONAL INC., et al.,

Defendants.

CASE NO. C04-2475JLR

ORDER

I. INTRODUCTION

This matter comes before the court on Defendant J. Kinderman & Sons, Inc.’s (d/b/a Brite Star Manufacturing Co.) (“Kinderman”) Motion to Dismiss for Lack of Subject Matter Jurisdiction and Improper Venue (Dkt. # 13).¹ Having read and considered all papers filed in support of and in opposition to this motion, the court DENIES Defendant’s motion without prejudice and stays the proceedings in this case for 45 days until the parties have conducted limited discovery regarding personal jurisdiction.

II. BACKGROUND

Plaintiff Jessica Wang (“Wang”) is a United States citizen residing in Taiwan. Wang invented and owns two U.S. patents related to lighted holiday displays. Wang alleges that Defendants L.B. International Inc., Kinderman, and Brite Star Distributors,

¹Although Defendant’s motion is entitled “Motion to Dismiss for Lack of Subject Matter Jurisdiction,” the substance of the motion indicates that it is a motion to dismiss for lack of *personal* jurisdiction. Def.’s Mot. at 1.

1 Inc. infringed on her patents by manufacturing, importing, and/or offering to sell lighted
2 holiday displays, including “Santa’s Christmas Magic” display and Brite Star lighted
3 sculptures. Compl. at 3.

4 Kinderman is a Pennsylvania corporation with its principal place of business in
5 Philadelphia, and contends that it does not conduct business in Washington, nor does it
6 have any employees, facilities, or property in Washington. Kinderman alleges that it does
7 not derive substantial revenue from sales in Washington and that any sales of the accused
8 products to Washington were made by Brite Star International, a non-party to this action.
9 Kinderman seeks to dismiss this action, arguing that this court lacks personal jurisdiction
10 or, in the alternative, proper venue.

12 III. DISCUSSION

13 A. Kinderman’s Motion to Dismiss for Lack of Personal Jurisdiction.

14 1. Legal Standard

15 Federal Circuit law governs the determination of personal jurisdiction in patent
16 infringement actions. 3D Sys. Inc. v. Aarotech Lab., Inc., 160 F.3d 1373, 1377-78 (Fed.
17 Cir. 1998). The plaintiff bears the burden of establishing that personal jurisdiction exists
18 by alleging facts that, if true, are sufficient to establish jurisdiction. Electronics for
19 Imaging, Inc. v. Coyle, 340 F.3d 1344, 1350 (Fed. Cir. 2003). When “additional facts are
20 likely available to assist the court in making the jurisdictional determination,” the court
21 may order the parties to conduct discovery for jurisdictional purposes only.
22 Commissariat a l’Energie Atomique v. Chi Mei Optoelectronics Corp., 395 F.3d 1315
23 (Fed. Cir. 2005); see also, Data Disc, Inc. v. Sys. Tech. Assoc., Inc., 557 F.2d 1280, 1285
24 n.1 (9th Cir. 1977) (“Discovery may appropriately be granted where pertinent facts
25 bearing on the question of jurisdiction are controverted or where a more satisfactory
26 showing of the facts is necessary.”).

1 **2. The Affidavits Submitted by the Parties are Insufficient for the Court to**
2 **Determine Whether it can Properly Exercise Personal Jurisdiction over**
3 **Kinderman.**

4 The facts in this case, as submitted by the parties, stand in stark contrast. On one
5 hand, Wang alleges that Kinderman has sold tens of thousands of the accused products
6 through at least three major nationwide retail chains (ACE Hardware, True Value, and
7 Rite Aid) which sell the products in Washington. Costanza Decl. at 2; Wolf Decl. at 3.
8 Wang attached copies of photographs to her complaint of the allegedly infringing
9 products being sold in Washington retail stores to support her claim that Kinderman's
10 products are actually being sold in Washington.² Compl., Exh. D. Wang also alleges that
11 Kinderman sells the accused products (at wholesale and retail levels) through its website.
12 Baca Decl. at 2, 3. Finally, Wang asserts that if Kinderman did not directly sell the
13 products to the retail chains, it at least brokered such sales, or was involved with the
14 “promotion, branding, importation, distribution and post-sales servicing of the accused
15 products.” Pl.'s Resp. at 8.
16

17 On the other hand, Kinderman argues that it has never made, sold, or offered for
18 sale the allegedly infringing lighting displays in Washington, nor sold them to companies
19 that it understood would sell the products in Washington. Kinderman Decl. at 2; 2nd
20 Kinderman Decl. at 1. Any such sales, according to Kinderman, were made by Brite Star
21 International, a non-party in this case.³ Kinderman further contends that the products
22 depicted in Exhibit D of the Amended Complaint, the Animated Feeding Doe and Crystal
23 Feeding Buck, are neither advertised nor sold on its website. However, Kinderman does
24

25 ²The photographs attached to Wang's complaint in Exhibit D are extremely difficult to
26 review. The court directs Plaintiff to submit clearer copies for the court's record indicating where
27 the pictures were taken.

28 ³Neither party suggests how Kinderman (d/b/a Brite Star Manufacturing) relates to Brite
Star International.

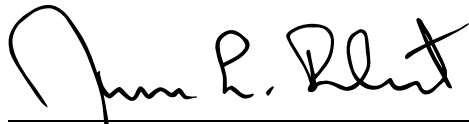
1 not appear to dispute Wang's allegations that other allegedly infringing products,
2 including the Animated Crystal Doe, Crystal Jumping Buck, Crystal Buck, Turning Head
3 Buck, Snowman, and French Country Feeding Doe, are sold on Kinderman's website.
4 Baca Decl., Exh. A, B, and D.

5 The parties' dispute over whether this court can properly exercise personal
6 jurisdiction over Kinderman turns largely on conflicting views of the facts. The
7 pleadings and other materials submitted by the parties, including sworn affidavits, reveal
8 that pertinent facts bearing on the question of jurisdiction are either controverted or
9 missing from the record. In order for the court to determine whether it can exercise
10 personal jurisdiction over Kinderman, a more satisfactory showing of the facts is
11 necessary.
12

13 IV. CONCLUSION

14 For all of the reasons stated above, the court DENIES Kinderman's motion to
15 dismiss (Dkt. # 13) without prejudice and stays proceedings in this case for 45 days so
16 that the parties may conduct limited discovery on the issue of personal jurisdiction. The
17 court DENIES Kinderman's alternative motion to dismiss based on improper venue, and
18 Kinderman's request for attorney's fees, as moot. Following discovery, the motion may
19 be refiled so this issue can be resolved.
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21 Dated this 11th day of April, 2005.

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25 JAMES L. ROBART
26 United States District Judge
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